**HONOURABLE SRI G.S.SINGHVI, THE CHIEF JUSTICE**

**AND**

**HONOURABLE SRI JUSTICE R.SUBHASH REDDY**

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**WRIT PETITION No. 20298 OF 2005.**

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Between:

M/s. Siddi Vinayaka Hotels (P) Ltd.

D.No.11-9-5, Kothapet X Road,

Saroornagar, RR District, represented

by its Managing Director,

Mr. S.Ganesh Reddy s/o Sri S.Narasimha Reddy

and others.

… Petitioners

And

Central Bank of India, Khairatabad Branch,

Near Meera Theatre, Hyderabad-500 004

and another.

… Respondents.

**::ORDER::**

Counsel for petitioners : Sri T.V.L.Narasimha Rao

Counsel for Respondent No.1 : Sri Y.Vasudeva Rao

**7th December, 2005**

**Per G.S.Singhvi, C.J.**

More than 20 years ago, the Supreme Court in **Asstt. Collector C.E., Chandan**

**Nagar v. Dunlop India Ltd.** deprecated the practice of entertaining the petitions under Article 226 of the Constitution of India only for the purpose of staying the proceedings initiated by public authorities for recovery of taxes etc. The Supreme Court held that the High Court should not allow its extraordinary jurisdiction to be used for interlocutory judicial intervention when the main issue is pending before other judicial and quasi-judicial fora. For the sake of reference, the relevant extracts of that Judgment are reproduced below:

> " . . . . Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

Notwithstanding the caution administered by the highest Court of the country, a large number of petitions are filed every year in all the High Courts for stay of the proceedings initiated by the public authorities for recovery of public debts and dues. The sole object of such petitions is to delay and, at times, to stultify the action taken for recovery of the public dues.

The petitioners who had taken loan from Central Bank of India (Respondent No.1), but did not repay the amount as per the schedule prescribed by respondent No.1, have invoked the jurisdiction of this Court under Article 226 of the Constitution of India for the purpose of stalling the proceedings initiated by the said respondent for recovery of the loan amount with interest. As per their own case, a sum of Rs.83,94,317.24 was due against the petitioners as on 25.3.2004 (according to the learned counsel for respondent No.1, the amount due from the petitioners as on today is more than Rs.1.00 crore). The grievance of the petitioners is that even though the application filed by respondent No.1 under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the 1993 Act') is pending before Debts Recovery Tribunal, Hyderabad. Proceedings have been initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the 2002 Act'). They have pleaded that by having filed application under Section 19(1) of the 1993 Act, respondent No.1 will be deemed to have foreclosed its option of taking action under the 2002 Act and,

therefore, notices dated 22.9.2003 issued by it under section 13 should be quashed.

Learned counsel for the petitioners argued that respondent No.1 cannot simultaneously invoke the provisions of 1993 Act and the 2002 Act for the purpose of recovery of the amount due from his clients. He submitted that the petitioners have already paid a sum of Rs.12.00 lakhs and if the Court allows six months period to them, the entire outstanding dues would be cleared. According to the learned counsel, if the proceedings initiated under the 2002 Act are not stayed, his clients will be deprived of their legitimate right to contest the proceedings pending before the Tribunal under the 1993 Act and also of the chance to repay the outstanding dues.

In our opinion, there is no justification, legal or otherwise, to entertain the prayer made in the petition. Since the amount due to the bank is not under dispute, the only course open to the petitioners to relieve them of the obligation to which they may be subjected by virtue of the proceedings initiated under the 1993 Act or 2002 Act is to approach respondent No.1 for settlement of their dues. Unfortunately, they have not adopted that course and sought judicial intervention for stalling the action initiated by respondent No.1 for recovery of the debt. The provisions of the 2002 Act do not contain any bar against the initiation of proceedings under the said Act during the pendency of the proceedings before the Debts Recovery Tribunal. Rather, non-obstante clause occurring in Section 13(1) of 2002 Act which empowers respondent No.1 to resort to the provisions of sub-section (2) makes it clear that 2002 Act has overriding effect on any other law. Therefore, the proceedings initiated by Respondent No.1 under the 2002 Act cannot be nullified on the ground of lack of jurisdiction. If the petitioners feel aggrieved by the impugned notices, the only remedy available to them is to file an appeal under Section 17(2) of the 2002 Act and there is no justification to entertain the petition filed under Article 226 of the Constitution of India by presuming that the remedy available under the said Act is not effective.

We are further of the view that if the petitioners feel that they have any legitimate cause to contest the proceedings initiated by the bank under the 1993 Act, then, they are free to raise appropriate plea before the Tribunal.

For the reasons mentioned above, the writ petition is dismissed. However, we make it clear that this order shall not preclude the petitioners from approaching respondent

No.1 for evolving a scheme for payment of the outstanding dues and hope that if any such representation is made, the competent authority of the bank would sympathetically consider the same. By way of caveat, we deem it proper to observe that the liberty given to the petitioners shall not operate as the stay on the proceedings pending before the Debts Recovery Tribunal or any action which the bank may initiate under the 2002 Act.

**G.S. SINGHVI, CJ**

7th December, 2005

**R. SUBHASH REDDY, J**

**Vr/vtv**